U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13212583

Date: AUG. 9, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an education specialist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center initially approved the petition. However, the Director subsequently revoked the approval, concluding that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. In addition, the Director determined that the Petitioner willfully misrepresented material facts in support of her petition.

On appeal, the Petitioner asserts that she is eligible for a national interest waiver and that she did not willfully misrepresent material facts.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer –
>
> > (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).
[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding revocation on notice, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

II. ANALYSIS

The record reflects that the Petitioner qualifies as a member of the professions holding an advanced degree. The next issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. In revoking the approval of the petition, the Director decided that the Petitioner did not demonstrate eligibility for any of the three prongs under the *Dhanasar* analytical framework.

A. National Interest Waiver

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. In her initial cover letter, the Petitioner claimed:

> I am an Education Specialist who has done extensive research into moral education, specifically, the moral development of teachers and students, and I have distinguished myself on the international level through my research. Education is an area that focuses

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

> on more than reading, writing, and arithmetic. It is one of the most important investments that a country can make in its people and its future and is crucial to reducing poverty and inequality . . . .
>
> . . . .
>
> The importance of education is recognized on the highest level, because education is essential for the U.S. economy. This is why my services as an innovative expert in the area of Education with particular focus on professionalization of teachers will be especially valuable in the United States. My passion for the development of better education method and education psychology is supported by my proven ability in my field and will be of great benefit for the national interest in the U.S. economy.

In the notice of intent to revoke (NOIR), the Director informed the Petitioner that she did "not provide specific insight as to what she intends to do as a[n] Educational Specialist in the education field or provide specific insight into the research she intends to conduct as a researcher in the field of education." Further, the Director concluded that the Petitioner did not offer sufficient evidence relating to the substantial merit and national importance of her proposed endeavor. In response, the Petitioner claimed:

> My intentions as an education specialist in the United States are to develop a character education program geared toward Asian Americans, which will provide a psychological support system and character education for Asians who have recently immigrated to the United States. The research I plan to conduct will be tailored to the development of this program.
>
> . . . .
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> I have accumulated my expertise on education through years of experience, and based on my expertise, the ultimate goal of my research is to develop a psychological support system and education program for Asians who have recently immigrated to the U.S., and for Asians who have just started studying in the U.S.; I would like to provide practical assistance to these populations.

On appeal, the Petitioner maintains that her "proposed endeavor is to develop a character education program geared towards Asian Americans, which will provide a psychological support system and character education for Asians who have recently immigrated to the United States."

As indicated above, the Petitioner initially proposed to "focus on professionalization of teachers." However, in response to the Director's NOIR and on appeal, the Petitioner claims "to develop a character education program geared toward Asian Americans" and "to develop a psychological support system and education program for Asians who have recently immigrated to the U.S., and for Asians who have just started studying in the U.S." Here, the Petitioner materially changed her proposed endeavor from professionalizing teachers to character education for Asian Americans. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1).

Moreover, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of character education for Asian Americans, as well as the related supporting evidence, and will adjudicate the record based upon her initially proposed endeavor.

At initial filing, while she claimed to "focus on professionalization of teachers," the Petitioner did not provide sufficient information and details to reflect a specific proposed endeavor as contemplated in *Dhanasar*. Instead, the Petitioner emphasized her past educational and professional achievements without elaborating and explaining how she intended to professionalize teachers in the United States. The Petitioner's experience, skills, and abilities in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. Furthermore, the Petitioner does not indicate that she intends to continue to pursue this proposed endeavor of professionalizing teachers, which was the original basis of her petition.

In light of the above, the Petitioner also did not demonstrate the substantial merit and national importance of her endeavor. The Petitioner made broad arguments regarding the overall importance of education and the education system of the United States but did not explain the potential impact or influence her endeavor of professionalizing teachers would have on education in the United States. Further, the record contains an article from edudemic.com pertaining to differences between education in South Korea and the United States and an article from koreatimes.co.kr reporting on President Barack Obama praising the South Korean education system. However, the Petitioner did not show how the articles relate to her proposed endeavor of professionalizing teachers; neither article discusses professionalizing teachers as part of the South Korean education system.

Because she did not provide specific details, support the record with sufficient documentation, and show that she intends to pursue her initial endeavor, the Petitioner did not demonstrate the substantial merit and national importance of her proposed endeavor. For these reasons, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework. Further analysis of eligibility under the second and third prongs, therefore, would serve no meaningful purpose. In fact, the Petitioner does not make any arguments on appeal relating to the Director's decision of the third prong. If the affected party does not address issues raised by the director, and those issues are dispositive of the case, the appeal will be dismissed based on those waived issues. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

B. Willful Misrepresentation of a Material Fact

The Director determined that the Petitioner misrepresented her professional experience.

1. Employment History

The Petitioner filed Form I-140, Immigrant Petition for Alien Worker, on April 6, 2015, indicating in Part 6 (Basic Information About the Proposed Employment) her job title as "Education Specialist"

and nontechnical description of job as "[c]onduct research and teach courses pertaining to education, such as counseling, curriculum, guidance, instruction."

On the accompanying ETA 750 Part B, item 15 requires a petitioner to "[l]ist all jobs held during the last three (3) years" and "[a]lso, list any other jobs related to the occupation for which the alien is seeking certification as indicated in item 9 [occupation in which alien is seeking work]." Here, ETA 750 Part B required the Petitioner to list all employment from April 2012 to April 2015, as well as any other jobs related to the occupation. The Petitioner, however, did not specify any employment in the three-year timeframe. Instead, the Petitioner responded with employment outside of this period as a "Specialized Researcher" at [redacted] University [redacted] from March 2009 to July 2009 and as a "Researcher" at [redacted] from March 2009 to February 2010.

Further, in the initial cover letter, the Petitioner claimed that she has "worked as [a] Specialized Researcher for the Research Team of the [redacted] church since 2010 in South Korea." The cover letter, however, did not support her claims on ETA 750 Part B; the Petitioner did not include any employment with the [redacted] Church on ETA 750 Part B.

In addition, the Petitioner submitted her curriculum vitae that reflected employment within the three-year timeframe that was not included on the ETA 750 Part B. For example, the Petitioner indicated an instance of "Lecture Experience" at [redacted] from September 2012 to February 2013 and three instances of "Lecture Experience" at [redacted] and [redacted] University from March 2012 to August 2012.[4] Moreover, the Petitioner listed "Research Experience" as a "Specialized Researcher" with the "Research Team of the [redacted] Church" from March 2010 to December 2011, which contradicts her cover letter claim that she has worked as a specialized researcher with the [redacted] Church since 2010.[5]

In the NOIR, the Director concluded:

> The petitioner claimed in her petition to be an education researcher since 1997. However, the evidence indicates that she has only been lecturing education psychology at various universities as a part-time lecturer after she earned her PhD degree, which she obtained in 2009, and she has not been involved with research after graduation in over 20 years . . . .

Although the Director stated that the Petitioner has only been lecturing part-time since her graduation in 2009, her curriculum vitae indicates that she has been lecturing since 2000. Further, while the Director concluded that the Petitioner has not been involved in research after graduation in over 20 years, both the ETA 750 Part B and curriculum vitae claim research involvement with [redacted] from March 2009 to February 2010, and her curriculum vitae and cover letter asserts research with the [redacted] Church from March 2010 to December 2011.

[4] The Petitioner lists 32 other lecturing experiences from 2000 – 2012.
[5] The Petitioner lists 11 other research experiences from 1997 – 2010, including as a researcher with [redacted] from March 2009 to February 2010, which corresponds with her answers on ETA 750 Part B.

In reply to the NOIR, the Petitioner claimed:

> In response to the assertion that I have not been involved in research since graduation, I have provided additional documentary evidence to negate that claim. In 2011, I performed and produced the results of a research study entitled [redacted] This study was conducted in response to a survey on the faith of [redacted] youth in the [redacted] Church, and took an in depth look into the religious consciousness of [redacted] teenagers. It was a first of its kind study that the [redacted] church was able to utilize in tailoring its approach to Sunday School to optimize the educational experiences . . . .

The Petitioner also submitted two articles reporting on the survey and a letter from [redacted] professor at [redacted], who stated that "[t]hrough the [redacted] conducted jointly with me in 2010, [the Petitioner], was able to write up, publish, and present a report . . . ."[6]

In revoking the approval of the petition, the Director noted that the survey report was not listed on her curriculum vitae, nor was it mentioned in a previous letter from [redacted], and determined that "[e]ven if USCIS viewed the conducted research in 2011 as credible . . ., her employment history is still inconsistent with her claim of being a full-time researcher." Furthermore, the Director concluded that the "petitioner did not submit evidence to establish that she did not misrepresent her professional experience as a full-time researcher." In addition, the Director stated that "the record contains copies of the petitioner's Certificate of Career (CoC), which are official documents from Employers in [redacted] showing that she worked as a part-time lecturer from March 2009 to August 2009 at [redacted] University and [redacted] University, "USCIS notes that there are other COCs in the record that reflect part-time teaching positions and reflects jobs in April of 2012 that should have been articulated in item 15 on ETA 750 Part B," and "[t]he COCs indicate the petitioner did not conduct research and did not work 40 hours per week."

A review of the COCs reflects the Petitioner's employment as a part-time lecturer/instructor from: March 2002 to June 2014 at [redacted] University, March 2005 to February 2013 at [redacted] and September 2011 to August 2012 at [redacted] University, which were not listed on her ETA 750 Part B. We note that the Petitioner is listed as a "Visiting Researcher" from March 2009 to February 2010 at [redacted]

On appeal, the Petitioner argues:

> The ETA 750B indicates that I "Conduct Research and teach courses pertaining education", but despite the fact that my hours as a lecturer were only part-time, I did in fact conduct research full time, and have submitted examples of my research, which I performed concurrently, in response to the NOIR to corroborate this fact. I was an independent full-time researcher whose actual lecturing duties were conducted on a part-time basis. As such, I did not willfully misrepresent my professional experience.

[6] The Petitioner also presented evidence of research conducted in 2019, which occurred after she filed her petition.

The Petitioner, however, did not explain why she omitted her work experience as a part-time lecturer at various universities on her ETA 750 Part B during the required three-year timeframe. Moreover, while the record sufficiently shows that she worked as a researcher from March 2009 to February 2010 at [redacted] the Petitioner did not support her assertions that she has "worked as [a] Specialized Researcher for Research Team of the [redacted] [C]hurch since 2010 in [redacted]" In fact, the record does not demonstrate that she has ever worked for the [redacted] Church as a specialized researcher; the record does not contain employment verification from the [redacted] Church of her claimed employment. Further, the Petitioner did not establish that she performed in a research capacity after her [redacted] employment in 2010 or that she was employed as an independent full-time researcher prior to her filing the petition. For these reasons, the Petitioner did not overcome the Director's decision concluding that she willfully made misrepresentations of material facts regarding her professional experience.

2. Translation and Research Project

In the NOIR, the Director stated:

> Authorized officials of [the U.S. Department of State] verified the two papers published in professional Journals in [redacted] in 2008 (The [redacted] Journal of the Human Development, The [redacted] Journal of Educational Psychology). However, in the translation, the petitioner was listed as one of two researchers but the original [redacted] version shows she was one of two research assistants. The two actual researchers shown in the original are omitted in the translation. Thus, it appears that the petitioner misrepresented her professional experience and achievements.

In response, the Petitioner contended:

> I am, in fact, listed as an author on both of the above-referenced journal articles. I have in no way misrepresented my authorship. Moreover, the English printouts of these two articles are the actual English versions and not my translations. However, testimonial evidence that I am, in fact, a co-author on both of these publications is presented by [redacted] the lead author on both studies.

In revoking the approval of the petition, the Director concluded:

> The petitioner did not submit evidence to clarify the reason the translation did not reflect the actual researchers and job titles on the article in the foreign language. Without clarification and evidence to reconcile the inconsistency between the translation and original, it appears that the petitioner misrepresented her professional experience.

On appeal, the Petitioner argues:

> The evidence I submitted shows that there is no issue with the 2008 paper, which the consul or investigator claimed to have a translation error. As for the 2000 Ministry of Education research report, it appears that the consul or investigator has been mistaken.

> The list of researchers' names appears in two occasions in that very report, and one can see that all five researchers' names were translated/presented there. Therefore, the consul's or investigator's claim is not correct because the co-researcher's name was not intentionally omitted. Regarding the title, "researcher" is a correct translation because I conducted the research together as a member of the research team. The grouped [redacted] characters [ ] is translated in English as "Research Team Member (or Group Member)". [ ] is properly translated as "Research" and [ ] is properly translated as "Team Member" or "Group Member". If one is not fluent in [redacted] however, he/she could easily misinterpret [ ] to mean "Assistant".

The Director's NOIR and revocation stated that the Petitioner's translations of her two 2008 articles incorrectly listed her as one of two researchers when she was one of two research assistants, and the two actual researchers were omitted in the translation. However, the record reflects that the U.S. Embassy [redacted] referred to the translation and position titles in the 2000 research project sponsored by the Ministry of Education entitled, [redacted] rather than the translations and position titles of the Petitioner's two 2008 articles. Specifically, the memorandum from the U.S. Embassy stated:

> Besides her MA thesis and PhD dissertation, there are only 2 publications included in the petition. [The Fraud Prevention Unit] verified the two papers published in professional Journals in [redacted] in 2008 (The [redacted] Journal of the Human Development, The [redacted] Journal of Educational Psychology). However, they were submitted with other members from [redacted] including [her] PhD dissertation advisor, [redacted] as the first author. After mentioning about her authorship for books and translation as well as publishing articles in university and scientific journal, [the Petitioner] claimed that "This experience has helped me become one of a few students who were elected to participate in state-sponsored research projects such as [redacted] for the Ministry of Education in [redacted] However, the exhibit indicates that her participation in the project actually happened in 2000 which was prior to all of the mentioned books and articles. Moreover, in the translation, she is listed as one of 2 researchers when the original [redacted] version shows she was one of 2 research assistants from [redacted] The 2 actual researchers shown in the original are omitted in the translation.

Notwithstanding the above, the Petitioner's brief, as indicated above, challenges the U.S. Embassy's findings regarding the translation and role with the 2000 research project. However, the Petitioner did not support her assertions with independent, objective evidence. She did not, for example, submit a new certified translation in accordance with 8 C.F.R. § 103.2(b)(3), or other evidence corroborating her role with the project. Without probative evidence establishing that she performed work as a researcher rather than as a research assistant on the project, the Petitioner did not demonstrate that she did not willfully make misrepresentations of material facts regarding her professional experience.

3. Determination

The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved

material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* As the Petitioner has not overcome all of the derogatory information contained in the Director's decision, we will enter a determination of a material misrepresentation of material facts.

In general, a few errors or minor discrepancies are not reason to question the credibility of an individual or an employer seeking immigration benefits. *See Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, if a petition includes serious errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after an officer provides an opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the facts stated in the petition are not true. *See Ho*, 19 I&N Dec. at 591. In this case, the discrepancies lead us to conclude that the evidence of the Petitioner's professional experience, which is material to her eligibility under the *Dhanasar* analytical framework, is neither true nor credible.

As outlined by the Board of Immigration Appeals, a material misrepresentation requires that the individual willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Kai Hing Hui*, 15 I&N Dec. at 288.

First, the Petitioner misrepresented her professional experience as discussed above. A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991).

Second, the Petitioner willfully made the misrepresentations. The Petitioner signed the Form I-140 and ETA 750 Part B, certifying under penalty of perjury that her petition and the evidence submitted with it are all true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). More specifically, the signature portion of Form I-140, at part 8, requires the petitioner to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct," and the signature portion of ETA 750 Part B, at item 16, requires the Petitioner to make the following declaration: "I declare under penalty of perjury the foregoing is true and correct." On the basis of this affirmation and declaration, made under penalty of perjury, we conclude that the Petitioner willfully and knowingly made the misrepresentations.

Third, the evidence is material to the Petitioner's eligibility. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. U.S.*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the misrepresentation cut off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. *See Ng*, 17 I&N Dec. at 537. Here, the misrepresentations regarding her professional experience relate to the second prong of the *Dhanasar* analytical framework; and therefore, are material to her eligibility.

Accordingly, by filing the instant petition, making false representations, and omitting information, the Petitioner has sought to procure a benefit provided under the Act through a willful misrepresentation of material facts. This finding of willful material misrepresentation shall be considered in any future proceeding where admissibility is an issue. *See* section 212(a)(6)(C) of the Act.

IV. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrate her eligibility for or otherwise merits a national interest waiver as a matter of discretion. In addition, by filing the instant petition and making material misrepresentations relating to her professional experience, the Petitioner sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. This finding may be considered in any future proceeding where admissibility is an issue. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.